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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/744,140	01/19/2001	Donald Michael Black	5950-01-CA	3004

7590 11/24/2003

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EXAMINER

MATTHEWS, WILLIAM H

ART UNIT	PAPER NUMBER
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3738

DATE MAILED: 11/24/2003

19

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/744,140

Applicant(s)

BLACK, DONALD MICHAEL

Examiner

William H. Matthews (Howie)

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 22 October 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-10 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
- a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

### Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

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***Response to Arguments***

1. Applicant's arguments with respect to claims 1-10 have been considered but are not persuasive for the reasons set forth in the office action mailed 10-21-03.

***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

3. Claim1-10 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Specifically the limitation "consisting essentially of" lacks antecedence in the specification. Furthermore Applicant describes at page 10, line 12 the requirement for limited alcohol consumption, page 16 line 4 adds administration of aspirin, and page 17 line 17 describes modifications to diet. Applicant's disclosure fails to teach a method comprising solely the step of administering cholesterol lowering agents. For purposes of examination "consisting essentially of" is assumed to include some dietary modifications.

***Claim Rejections - 35 USC § 102***

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4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

5. Claims 1-3 are rejected under 35 U.S.C. 102(e) as being anticipated by Seed et al. US PN 5,861,399.

See line 62 of col. 2 through line 20 of col. 3.

### ***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 1-4 and 9-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Whitney et al. US PN 6,180,660 in view of Jeevanandam et al. US PN 5,957,916.

Whitney et al. discloses in lines 17-43 of col. 1, lines 8-13 of col. 2, 45-51 of col. 4, lines 27-29 of col. 3, Example 1 in col. 5-6, and lines 1-37 of col. 7 a method of administering cholesterol lowering drugs such as atorvastatin or fibrates to prevent or delay the need for coronary revascularization procedures. Whitney et al. lacks the

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express written disclosure that the coronary revascularization procedure to be prevented or delayed is catheter based. Jeevanandam et al. teaches in the abstract that is well known in the art that revascularization procedures are catheter based.

Therefore it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the method disclosed by Whitney et al. by preventing a catheter based revascularization procedure as taught by Jeevandam et al.

8. Claims 1-6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bocan WO 97/16184 in view of Jeevanandam et al. US PN 5,957,916.

Bocan discloses in see lines 12-25 of page 3 and lines 1-12 of page 5 a method of delaying or preventing the need for revascularization in patients suffering from coronary artery by administering 5-80 mg of atorvastatin per day. Bocan discloses all limitations of claims 1-6 but lacks the express disclosure of performing the method to prevent or delay a revascularization procedure that is catheter based. Jeevanandam et al. teaches in abstract that is well known in the art that revascularization procedures are catheter based.

Therefore it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the method disclosed by Bocan by preventing a catheter based revascularization procedure as taught by Jeevandam et al.

9. Claims 1, 7, and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bisgaier et al. US PN 5,648,387 in view of Jeevanandam et al. US PN 5,957,916.

Bisgaier discloses in lines 5-12 of col. 1, lines 26-35 of col. 2, and lines 35-62 of col. 6 a method of treating patients with coronary artery disease by administering effective amounts of cholesterol lowering drugs rather than other therapies. Bisgaier et al. discloses all elements of claims 1, 7, and 8 but lacks the express disclosure of preventing or delaying a catheter based revascularization. However, Jeevanandam et al. teaches in lines 20-33 of col. 1 that vascular diseases are well-known in the art to be treated with catheter based revascularization.

Therefore it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the method disclosed by Bocan et al. by preventing a catheter based revascularization procedure as taught by Jeevandam et al.

### ***Conclusion***

10. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to William H. Matthews (Howie) whose telephone number is 703-305-0316. The examiner can normally be reached on Mon-Fri 7:00-4:30 (Every other Friday off).


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Corrine M. McDermott can be reached on 703-308-2111. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 308-2708 for regular communications and (703) 305-3590 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0858.



WHM

November 19, 2003



CORRINE McDERMOTT  
SUPERVISORY PATENT EXAMINER  
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